

Internal Revenue Service
memorandum

TL-N-2151-88

WHEARD CC:TL:TS

date: **MAR 23 1988**

to: District Counsel, Chicago MW:CHI
Attn: Sheldon Kaye

from: Director, Tax Litigation Division CC:TL:TS

subject: Application of I.R.C. § 6224(c)(2) Consistent Settlement

This supplements our prior oral advice of December 23, 1987.

ISSUE

Whether partners can bifurcate a settlement agreement containing terms relating to both TEFRA and non-TEFRA partnership years and request only the terms applicable to the TEFRA years under the consistent settlement mandate of I.R.C. § 6224(c)(2) applicable to TEFRA partnership years.

CONCLUSION

An agreement covering both TEFRA and non-TEFRA years is not subject to consistent settlement under section 6224(c)(2).

FACTS

The Service and petitioners reached a basis for settlement with respect partnership adjustments which necessarily included both TEFRA and non-TEFRA years.

DISCUSSION

The provisions of TEFRA, I.R.C. §§ 6221-6233, generally apply to partnership taxable years beginning after September 3, 1982. Sec. 407(a)(1), (3); P.L. 97-248.

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Section 6224(c)(2) provides, in so far as relevant here, as follows:

If the Secretary enters into a settlement agreement with any partner with respect to partnership items for any partnership taxable year, the Secretary shall offer to any other partner who so requests settlement terms for the partnership taxable year which are consistent with those contained in such settlement agreement. . . .

Temp. Treas. Reg. § 301.6224(c)-3 further provides as relevant:

Consistent settlements. -- (a) In general. If the Service enters into a settlement agreement with any partner with respect to partnership items, the Service shall offer to any other partner who so requests in accordance with this paragraph (c) of this section settlement terms which are consistent with those contained in the settlement agreement entered into.

(b) Requirements for consistent settlement. "Consistent" settlement terms are those based on the same determinations with respect to partnership items. Settlements with respect to the partnership items shall be self contained; thus, a concession by one party with respect to a partnership item may not be based on upon a concession by the other party with respect to a nonpartnership item. Settlements shall be comprehensive, that is, a settlement may not be limited to selected items. The requirement for consistent settlement terms applies only if -

(1) The items were partnership items for the partner entering into the original settlement immediately before the original settlement, and

(2) The items are partnership items for the partner requesting the consistent settlement at the time the partner files the request.

. . . .

Commonly, settlements with respect to partnership taxable years must cover more than one year since adjustments in one year may necessarily affect adjustments in another year. For instance, disallowing a deduction in one year may necessarily require that the deduction be allowed in the following year, such as when there is a dispute as to when an asset was placed into service triggering the allowance of certain deductions. With respect to commodities or future straddles the Service commonly disallows a loss in the initial year of investment and disallows an approximately equal amount of gain in the following years. Additionally, the Service sometimes allows a cash out-of-pocket allowance in the first year of the investment, with a disallowance of losses in subsequent years. In all of these circumstances where a settlement covers more than one year the settlement is an integrated agreement in which gain and loss in one year is integrally related to gain or loss in another year. In the non-TEFRA context the taxpayer is required to take the whole package.

Where a settlement integrally involves both TEFRA and non-TEFRA years, it is our position that the consistent settlement provision of section 6224(c)(2) would not apply. Since the consistent settlement provision applies only with respect to partnership items for any taxable year, and since in the non-TEFRA year there are no partnership items, there are no rights to consistent treatment. I.R.C. §§ 6231(a)(3) and 6224(c)(2). However, where settlement terms for both years are not clearly interdependent, the consistent treatment provision would apply to the TEFRA portion.

We are in the process of drafting a Litigation Guideline Memorandum dealing with numerous issues relating to settlements which involve more than a single year in dispute.

Please refer any questions you have regarding the above matter to William Heard at FTS 566-3233.

MARLENE GROSS

By:



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